

Internal Revenue Service

Number: **202045007**

Release Date: 11/6/2020

Index Number: 367.01-00, 367.03-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B04

PLR-110013-20

Date:

May 22, 2020

Legend

FP =

US Target =

Foreign
Holdco =

US Sub 1 =

New US
Target =

FPS 1 =

FPS 2 =

FPS 3 =

FSub 1 =

New FSub =

Voting
Agreement =

Third-party
Investors =

Country A =

Country B =

State A =

State B =

a percent =

b percent =

c percent =

d percent =

e percent =

f percent =

g percent =

h percent =

i percent =

j percent =

k percent =

l percent =

Dear :

This letter responds to your authorized representative's letter dated April 6, 2020, requesting a ruling under Treas. Reg. § 1.367(a)-3(c)(9)(ii). The material information submitted in that request and in subsequent correspondence is summarized below.

The ruling contained in this letter is based on facts and representations submitted by you and your representatives and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

The description below reflects the relevant organizational structure immediately before the Proposed Transaction (defined below).

FP, a publicly traded corporation directly owns all of the stock of Foreign Holdco, and directly and indirectly through its wholly owned foreign entities owns all the stock of US Sub 1, a State A corporation. Foreign Holdco owns all of the stock of FSub 1. Each of FP, Foreign Holdco and FSub 1 is a Country A corporation. Neither Foreign Holdco nor FSub 1 directly or indirectly owns stock of US Sub 1, and neither US Sub 1 nor any entity that directly or indirectly owns stock of US Sub 1, other than FP, directly or indirectly owns stock of Foreign Holdco or FSub 1.

FSub 1 owns, directly and indirectly through a wholly owned foreign entity, a percent of the units of FPS 1, a Country B partnership. Public investors own the remaining b percent of FPS 1. A wholly owned foreign subsidiary of FSub 1 is the general partner in FPS 1.

FSub 1 owns, directly and indirectly through wholly owned foreign entities, c percent of the units of FPS 2, a Country B partnership. FPS 1 owns the remaining d percent of FPS 2. A wholly owned foreign subsidiary of FSub 1 is the general partner in FPS 2, but the voting rights with respect to FPS 2 are subject to Voting Agreement.

US Sub 1 is the general partner in, and directly and indirectly owns e percent of the units of FPS 3, a Country B partnership. FPS 2 owns, indirectly through wholly owned foreign entities, f percent of the units of FPS 3. The remaining g percent of the units of FPS 3 are owned by Third-party Investors.

FPS 2, indirectly through wholly owned foreign entities, FPS 3, and public shareholders (the “US Target Public”) own h percent, i percent, and j percent, respectively, of the stock of US Target, a publicly traded State A corporation.

Proposed Transaction

The following steps (collectively, the “Proposed Transaction”) will be effectuated pursuant to a single, integrated plan:

1. US Target will merge with and into New US Target, a newly formed State B corporation, with New US Target surviving and all shareholders of US Target receiving stock in New US Target in exchange for their stock of US Target (the “Reorganization”).
2. FPS 2, directly and indirectly through wholly owned foreign entities, will form New FSub and contribute assets to New FSub in exchange for k percent of the stock of New FSub (the “Contribution”).
3. Certain members of the US Target Public will transfer stock of New US Target to New FSub in exchange for l percent of the stock of New FSub (the “Share Exchange”).

Representations

US Target makes the following representations with respect to the Proposed Transaction:

1. The Reorganization will qualify as a reorganization under section 368(a)(1)(F).
2. The Contribution and the Share Exchange together will qualify as an exchange under section 351.
3. New US Target will satisfy the reporting requirements of Treas. Reg. § 1.367(a)-3(c)(6) with respect to the Share Exchange.
4. The requirements set forth in Treas. Reg. § 1.367(a)-3(c)(1)(i) and (iv) will be satisfied with respect to the Share Exchange.
5. But for section 318(a)(3) causing a U.S. person as defined in section 7701(a)(30) ("U.S. person") to be treated as owning stock owned by a person who is not a U.S. person, the requirement set forth in Treas. Reg. § 1.367(a)-3(c)(1)(ii) will be satisfied with respect to the Share Exchange.
6. The Proposed Transaction is not part of a plan (or series of related transactions) resulting in any foreign corporation being treated as a "surrogate foreign corporation" within the meaning of section 7874(a)(2)(B) or a domestic corporation as a result of section 7874(b).

Law

When a U.S. person ("U.S. transferor") transfers appreciated property to a foreign corporation ("transferee foreign corporation") in a transaction that would otherwise qualify as a nonrecognition exchange ("outbound nonrecognition transaction"), the U.S. transferor will generally recognize gain (but not loss) under section 367(a)(1). However, under Treas. Reg. § 1.367(a)-3(c), a U.S. transferor of appreciated stock of a domestic corporation ("U.S. target") in an outbound nonrecognition transaction does not recognize gain under section 367(a)(1) if the U.S. target complies with the reporting requirements of Treas. Reg. § 1.367(a)-3(c)(6) and each of the following four conditions is satisfied:

Fifty percent or less of both the total voting power and total value of the stock in the transferee foreign corporation is received in the transaction, in the aggregate, by U.S. transferors. Treas. Reg. § 1.367(a)-3(c)(1)(i).

Fifty percent or less of each of the total voting power and the total value of the stock of the transferee foreign corporation is owned, in the aggregate, immediately after the transfer, by U.S. persons that are either officers or directors of the U.S. target or that are five-percent target shareholders of the U.S. target. Treas. Reg. § 1.367(a)-3(c)(1)(ii). A five-percent target shareholder is a person that owns at least five percent of either the

total voting power or the total value of the stock of the U.S. target immediately before the transfer. Treas. Reg. § 1.367(a)-3(c)(5)(iii).

Either the U.S. transferor is not a five-percent transferee shareholder, or the U.S. transferor enters into a five-year agreement to recognize gain with respect to the U.S. target stock as provided in Treas. Reg. § 1.367(a)-8. Treas. Reg. § 1.367(a)-3(c)(1)(iii). A five-percent transferee shareholder is a person that owns at least five percent of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer. Treas. Reg. § 1.367(a)-3(c)(5)(ii).

The active trade or business test is satisfied. Treas. Reg. § 1.367(a)-3(c)(1)(iv). The active trade or business test is satisfied if each of the following three conditions is satisfied:

The transferee foreign corporation (or any qualified subsidiary or qualified partnership as defined under Treas. Reg. § 1.367(a)-3(c)(5)(vii) and (viii), respectively) has been engaged in the active conduct of a trade or business outside the United States, within the meaning of Treas. Reg. § 1.367(a)-2(d)(2), (3), and (4), for the entire 36-month period immediately preceding the transfer. Treas. Reg. § 1.367(a)-3(c)(3)(i)(A).

At the time of the transfer, neither the transferors nor the transferee foreign corporation (or any qualified subsidiary or qualified partnership engaged in the active trade or business) has an intention to substantially dispose of or discontinue such trade or business. Treas. Reg. § 1.367(a)-3(c)(3)(i)(B).

The substantiality test is satisfied. Treas. Reg. § 1.367(a)-3(c)(3)(i)(C). The substantiality test is satisfied if, at the time of the transfer, the fair market value of the transferee foreign corporation is at least equal to the fair market value of the U.S. target. Treas. Reg. § 1.367(a)-3(c)(3)(iii).

Except as otherwise provided, the rules of section 318, as modified by the rules of section 958(b), apply for purposes of determining the ownership of stock under Treas. Reg. § 1.367(a)-3(c), including for purposes of determining whether a U.S. person is a five-percent target shareholder. Treas. Reg. § 1.367(a)-3(c)(4)(iv). Section 318(a)(2)(A), (B) and (C) provide rules for attributing the ownership of stock owned by a partnership or estate, trust, or corporation to a person which is a partner or beneficiary, trustee, or shareholder, respectively. Section 318(a)(3)(A), (B), and (C) provide rules for attributing the ownership of stock owned by a person to a partnership or estate, trust, or corporation in which such person is a partner or beneficiary, trustee, or shareholder, respectively. In particular, section 318(a)(3)(C) provides that, if 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person.

Under Treas. Reg. § 1.367(a)-3(c)(9)(ii), the Service may, in limited circumstances, issue a private letter ruling to permit a taxpayer to qualify for an exception to section

367(a)(1) if the taxpayer is unable to satisfy any requirement of Treas. Reg. § 1.367(a)-3(c)(1) due to the application of the constructive ownership rules of Treas. Reg. § 1.367(a)-3(c)(4)(iv).

Ruling

Based solely on the information submitted and the representations set forth above, no U.S. person will be treated as owning stock owned by a person who is not a U.S. person by reason of section 318(a)(3) for purposes of determining whether 50 percent or less of each of the total voting power and the total value of the stock of New FSub is owned, in the aggregate, immediately after the Share Exchange, by U.S. persons that are either officers or directors of New US Target or that are five-percent target shareholders of New US Target. Treas. Reg. § 1.367(a)-3(c)(9)(ii).

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

No opinion is expressed or implied about the federal income tax consequences of any other aspect of any transaction or item discussed or referenced in this letter, or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above ruling. Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction.

In particular, no opinion is expressed or implied as to whether any step in the Proposed Transaction qualifies as a reorganization within the meaning of section 368(a)(1)(F) or as an exchange under section 351. In addition, no opinion is expressed or implied regarding the application of section 7874 to any step in the Proposed Transaction. Nor is an opinion expressed or implied as to the reporting requirements of U.S. persons exchanging stock under section 6038B and the regulations thereunder.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed. Alternatively, a taxpayer filing its return electronically may satisfy this

requirement by attaching a statement to its federal income tax return that sets forth the date and control number of this ruling.

Sincerely,

Laura Williams
Branch Chief, Branch 4
Office of Associate Chief Counsel (International)

cc: